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Governor Sean Parnell  
STATE OF ALASKA

March 29, 2010

Colonel Reinhard W. Koenig  
District Commander  
U.S. Army Corps of Engineers, Alaska District  
P.O. Box 6898  
Elmendorf AFB, AK 99506-0898

Re: Request for Reconsideration of Decision to Not Elevate Permit Application to Division Engineer

Dear Colonel Koenig,

In the interest of public good and proper deference to the State of Alaska, I am, again, asking that you reconsider or withdraw your determination not to elevate the permit decision on ConocoPhillips' CD-5 permit application to the Division Engineer. On reconsideration, your decision should be vacated and the permit application elevated to the Division Engineer.

I believe that referral is appropriate whereas here I made my support of the permit application abundantly clear in our meeting of December 1, 2009. You state that my communication did not trigger 33 C.F.R. § 325.8(b). However, for several reasons, the overly-literal interpretation seems unreasonable.

First, my position in support of the project which I articulated to you at our December 1, 2009 meeting could not have been clearer.

Second, you did not inform me at our meeting that you would be deciding to deny the permit or that I needed to submit my position in writing. I could not anticipate the apparent necessity of reducing my position to writing in order to trigger 33 C.F.R. § 325.8(b). If your interpretation is correct, it will require that I submit written position papers on every single permit even though the official State position is known to the Army Corps.

Third, I believe your interpretation is contrary to the purpose of 33 C.F.R. § 325.8(b), which is to refer decisions to the Division Engineer when it is clear that a decision will be contrary to the State's official position. Refusing to elevate the decision because my support was not in writing elevates form over substance, and undercuts the purpose of 33 C.F.R. § 325.8(b).

Fourth, the decision is contrary to the strong policy of deference and respect for the opinion and position of State authorities. This policy was established by Congress decades ago and formally adopted into the Corps permitting regulations.<sup>1</sup> In this case, the State's official position was clear. Not only were State permits issued for the project, the Commissioner of the Department of Natural Resources provided a letter of unequivocal support for the project (Commissioner Irwin's letter is enclosed, and, as mentioned herein, my personal statements of support were provided at our December 1, 2009 meeting).

All of these points justify reconsideration, vacating the decision, and referring the permit application to the Division Engineer for reevaluation.

In addition, your conclusion that the underground pipeline ("HDD") option to cross the river was a "practicable" alternative is contrary to the position of the landowners on which development of a HDD option would take place. (Kuukpik Corporation, the State of Alaska (owner of the riverbed the HDD option would have to pass through), the Arctic Slope Regional Corporation, the City of Nuiqsut, and the North Slope Borough). All these entities and property owners supported the applicant's CD-5 plan, which was the result of month of negotiations. None of those groups supported HDD. Further, the North Slope Borough is unlikely to approve a permit for an HDD based project.

The lack of ability to use necessary land areas for a HDD alternative and the inability to obtain required permits should have been discussed in the decision, and if properly considered, would have led to a conclusion the HDD alternative was not "available" and not a "practicable alternative."<sup>2</sup>

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<sup>1</sup> Section 101(b) of the Clean Water Act states the Act is to "recognize, preserve, and protect the primary responsibilities and rights of states to plan the development and use of land and water resources ..."; Section 202(b) of the Environmental Quality Improvement Act of 1970 Congress expressed the policy that the primary responsibility for enhancement of environmental quality rests with state and local governments. In Corps regulations. 33 CFR 320.4(j)(1) "Even if official certification ... is not required ... but a state agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest."; 33 CFR 320.4(j)(2) "The primary responsibility for determining zoning and land use matters rests with the state, local and tribal governments. The district engineer will normally accept decisions by such governments ..."; 33 CFR 320.4(j)(4) "[a] permit will generally be issued following receipt of a favorable state determination ..."

<sup>2</sup> Omission of facts, discussion, and the rationale for reaching a conclusion is grounds for reversal of a permit decision. See, Regulatory Guidance Letter 82-08 (State and Local Decisions) issued June 18, 1982, ("If a district commander proposes to make a decision on a permit application which is contrary to state or local decisions, the district commander must clearly document the significant national issues and explain how they are overriding in importance"); Administrative Appeal Decision, Corps File Number MVN-2005-2099-WW, November 16, 2008, (Remanding District Engineer's decision where "statements [in decision] are not supported by discussion or analysis ... [and the] rationale in reaching these conclusions is not provided in the decision document ...").

Colonel Reinhard Koenig  
March 29, 2010  
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Similarly, the HDD alternative carries its own set of negative risks, with "other significant adverse environmental consequences" that were inadequately considered or balanced with the benefits of the project and the applicant's preferred alternative. Landowners and affected communities have expressed concern about corrosion, as well as erosion and other problems associated with a buried and inaccessible pipeline. It is commonsense that a buried pipeline is harder to visually monitor for possible leaks, maintain, or dig up and repair than an above ground line, particularly when it is underneath the bed of a major river in Northern Alaska. The risks of an underground line to cross the river were not evaluated or clearly balanced against the other alternatives and the benefits of moving ahead with the project. The HDD alternative was not properly analyzed as an overriding factor in the public interest.

Jobs, economic development, and domestic oil and gas production subject to your permitting authority are incredibly important not just to Alaska but to the nation. The incredibly important interests at stake and your decision not to recognize or give proper weight to the State's position means that I must now request copies of all major permit applications pending and any future major permit applications for oil, gas, or mineral development.

Providing formal and actual notice of permit applications ensures an opportunity to review the applications and submit a position in writing. Copies of the permit application forms (minus exhibits or attachments) should be sent to Commissioner Irwin and Randy Ruaro, Deputy Chief of Staff, in my Juneau office.

I look forward to building a strong working relationship between the State and the Army Corps in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Parnell", with a stylized flourish at the end.

Sean Parnell  
Governor

Enclosure

cc: The Honorable Tom Irwin, Commissioner, Alaska Department of Natural Resources  
John Katz, Director, State/Federal Relations and Special Counsel

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### OFFICE OF THE COMMISSIONER

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July 10, 2009

Colonel Reinhard W. Koenig  
Alaska District Engineer  
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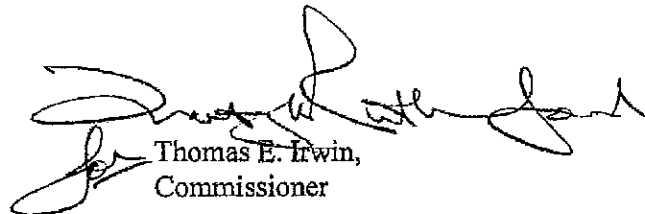
Dear Colonel Koenig:

I have reviewed the July 6, 2009 letter to you from the Environmental Protection Agency Region 10, recommending denial of the 404 permit for the Conoco Phillips Alaska, Inc. (CPAI) Alpine CD-5 Satellite Development project, pending further analysis and preparation of a Supplemental EIS. I believe this would lead to an unnecessary delay in the project of a year or more.

The CD-5 project as proposed represents a coordinated effort between CPAI and the Village of Nuiqsut. For the Department of Natural Resources, review of plans for CD-5 began in 2003 as part of the Alpine Satellite Development Plan Environmental Impact Statement (ASDP EIS), which was finalized in September 2004. Throughout the EIS process aspects of the CD-5 project were evaluated for their potential impacts to subsistence users, fish, wildlife, and water quality in the project area. As a result of the EIS process and the permit review process, the CD-5 project has been refined and modified to incorporate key design changes and new hydrologic data to reduce the potential for impacts to local subsistence users and to reduce the potential for environmental impacts to the Colville River Delta area. One of the most significant changes to the project is CPAI's current plan to span the entirety of the Nigliq Channel, designed to significantly reduce the potential for scour and the need for long-term maintenance. This bridge will be the first full spanning bridge of a river distributary channel on the North Slope.

With these design changes, in addition to local support from the City and Village of Nuiqsut, I support the CD-5 project as proposed. Thus, I urge you not to deny the issuance of CPAI's permit application on the basis of EPA's letter and further stress that a Supplemental EIS is unnecessary for this important project.

Sincerely,



Thomas E. Irwin,  
Commissioner

cc: Bruce St. Pierre, CPAI

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans"*

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## Corps does Alaska and Natives a disservice

**COMPASS: Other points of view**

By RICHARD GLENN

(03/29/10 19:20:14)

The recent denial of the proposed westward expansion of the Alpine oil field by the Army Corps of Engineers wraps Alaska up in a bizarre Hamlet-like scene. Instead of something rotten in the State of Denmark, something is seriously rotten with the Corps.

While many Alaskans are focused on the state of Alaska's future gas potential, lurking in the background is the vise-like fist of a federal agency subtly refusing to unclench its grip on nationally valuable onshore oil resources within the National Petroleum Reserve-Alaska (NPR-A).

At the urging of the Corps, Conoco Phillips labored over a decade-long process to engage local, regional and statewide stakeholders to secure a bridge permit to access the western portion of the Alpine Development oil field. Then the Corps did the classic bait-and-switch and denied Conoco Phillips access west into NPR-A.

This is troubling on many levels. First, at the urging of the Corps, Conoco Phillips went above and beyond to educate, outreach and partner with local, regional and statewide stakeholders on this project. It is a rare occasion when you can gain agreement from the village corporation, city government, tribal council, regional corporation, regional borough and the state of Alaska. To Conoco Phillips' credit, they did just that. Rather than fulfill its signaled commitment to the people of Alaska, the Corps denied the CD-5 Alpine Development permit.

Second, the denial of Conoco Phillips' permit application also denies Alaska Natives the opportunity to explore for oil and gas on the lands granted through the passage of the Alaska Native Claims Settlement Act of 1971. This is significant because the profits from development on ANCSA lands are shared among every region within Alaska. They have a ripple effect throughout the Alaska economy. Therefore, if I were an Alaskan owned business like local ATV shops, for example, I would be worried about the impact the Corps decision will have on my business.

Finally, Alaskans are saddled with the suffocating cumulative impacts of federal agency decisions. They have told Alaskans not to develop ANWR, but to develop in NPR-A. Yet, when we try, we're denied. Now we face serious opposition for near-shore and offshore development because of the proposed critical habitat designation for polar bears and other species. It seems we are left without aboriginal title or the ability to develop what we were given in exchange for it.

I learned early on from a prominent Alaska leader that there are two philosophies that dominate the federal government's school of thought with respect to Native Americans. One is self-determination and the other is termination. The passage of ANCSA, despite the epic-scale takings, has within it an exercise in self-determination. The decision by the district colonel of the Corps to deny our people access to opportunities on Native-owned lands is a step toward termination.

The only friends Alaskans seem to have at the federal level are Sens. Murkowski and Begich, Congressman Young, and members of the Hawaiian delegation. It is unfortunate that we share with Hawaii a common spirit of disenfranchisement.

The time is now for Alaskans to pay more attention to federal policies. We have the opportunity to continue the responsible development of our resources to provide the jobs for our people, revenue to the state, and benefits for Alaskans to keep our state progressing forward for the next 30 years. However, if not given the chance, we'll find ourselves in a situation where Alaskans are dependent upon the federal government for hand-outs, not hand-ups.

Alaskans, while it is important to look at the state's progress on development issues, if we lose sight of the decisions made at the federal level, actions taken by the state of Alaska are moot.

It is important for the Corps to do the right thing; it's time to work with Alaska on this important project. Otherwise, the state of Alaska's economy will mirror the fate that usually unfolds in the last act of a Shakespearean tragedy.

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Richard Glenn is executive vice president of lands and natural resources for Arctic Slope Regional Corp. He lives in Barrow.

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